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JAMES H. McKENNEY,
Clerk.

No. 358. 124

Motion to advance.

IN THE SUPREME COURT OF THE UNITED STATES AT WASHINGTON, D. C.

Filed January 13, 1902.

Motion to Advance.

NO. 358.

The Mexican Central Railway Company, Limited,
Plaintiff in Error,

VERSUS

J. W. Eckman, Guardian of the person and estate of Alfonso Huesselmann,
Defendant in Error.

MILLARD PATTERSON,
Attorneys for the Defendant in Error,
J. W. Eckman, Guardian, Etc.

PATTERSON & ORR, PRINTERS.

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VERSUS

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Defendant in Error.

Now comes the defendant in error, J. W. Eckman, Guardian of the person and estate of Alfonso Huesselman; and moves the court to advance this cause on the docket of this court for the following reasons, to-wit:

The only question in issue is the question of the jurisdiction of the court below, to-wit, the Circuit Court in and for the Western District of Texas, to hear and determine this cause. Two

questions are raised challenging the jurisdiction of the court below, both of which are certified by the presiding judge of the court below to this court for its determination. The first question is, in a suit by a guardian of the person and estate of a minor appointed by the proper court in the State of Texas, in which state the Guardian and Ward reside, and of which the Guardian is a citizen, against a railway company chartered by the laws of the State of Massachusetts, where it has its legal domicile and citizenship, does the residence and citizenship of the Guardian control the question of jurisdiction, or is it controlled by the citizenship of the Ward.

The second question is, can an American citizen residing in the County of El Paso, State of Texas, and in the Western District of Texas, and being a citizen of the State of Texas, maintain an action against a railroad corporation chartered under the laws of the State of Massachusetts, in which state it has its legal citizenship, for personal injuries, happening through the negligence of the railroad company to such American citizen while in the employment of such railroad company in the Republic of Mexico, it having a local agent representing it in El Paso County, Texas, upon whom service was legally had.

A brief statement of the facts are as follows: Alfonso Huesselmann, the Ward of J. W. Eckman, the Guardian, is a minor, and was employed by the plaintiff in error, the Mexican Central Railway Company, Limited, as a brakeman in the Republic of Mexico, and while performing his duty he received severe personal injuries on account of the negligence of the plaintiff in error. Subsequent to his injuries he removed to the State of Texas where he resided continously up to the time of the

trial of this case. Before this suit was instituted, J. W. Eckman, who was a citizen and a resident of El Paso County, in the state of Texas, was appointed the statutory Guardian of the person and estate of the minor, Huesselman. After his appointment as such Guardian, he instituted suit against the plaintiff in error for the injuries sustained by his ward in the Republic of Mexico. The plaintiff in error claims, that in as much as the Ward is a minor, and his parents are living in the State of Illinois, that the legal residence and citizenship of the minor is that of his parents, and that his citizenship, and not the citizenship of his Guardian, will control.

The plaintiff in error is a railroad corporation duly and legally incorporated under the laws of the State of Massachusetts, where it has its legal citizenship, but is doing business in El Paso County, State of Texas, where it has a local agent representing it. Service was had upon such local agent, the plaintiff in error appeared and pleaded to the jurisdiction of the court on the two grounds set out in this motion. Its plea to the jurisdiction was disallowed and overuled by the trial court. Upon the application of the plaintiff in error the question of jurisdiction was certified to this court by the trial court. The Guardian in the trial court recovered a judgment for his said Ward for damages on account of personal injuries sustained in Mexico.

The reason why the defendant in error makes this motion to advance this cause is, that the only issue involved in the case is one of jurisdiction, and he believes that both questions have been heretofore determined by this court in other causes, and that the matter is one of great importance to the defendant in error, and, as he believes the plea to the jurisdiction is wholly without merit

and that the cause should be advanced that it may be speedily determined.

With this motion the defendant in error has filed a printed brief in which are cited the authorities upon both questions involved.

Wherefore, the defendant in error prays that this cause may be advanced upon the docket of this court, and upon final hearing of the same that it may be affirmed.

Respectfully submitted.

Millard Patterson

Attorney for the Defendant in Error.